

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LEO RANDOLPH,

Plaintiff,

v.

Case No. 2:06-cv-3
HON. R. ALLAN EDGAR

MICHAEL DECKER,

Defendant.

ORDER

Plaintiff Leo Randolph, a state prisoner in the custody of the Michigan Department of Corrections, brings this *pro se* civil rights action against defendant Michael Decker under 42 U.S.C. § 1983. Plaintiff claims a violation of his right not to be subjected to cruel and unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution. Plaintiff also asserts related tort claims against defendant Decker under Michigan state law, and plaintiff invokes this Court's supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337.

Defendant Decker moves for summary judgment to dismiss the complaint under Fed. R. Civ. P. 56. [Doc. No. 10]. Plaintiff opposes the motion. [Doc. Nos. 20, 21].

The motion was referred to United States Magistrate Judge Timothy P. Greeley for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1. On October 26, 2006, the Magistrate Judge submitted his report and recommendation. [Doc. No. 23]. It is recommended that the motion for summary judgment be denied.

Defendant has filed objections to the report and recommendation. [Doc. No. 24]. After reviewing the record *de novo*, the Court concludes that the defendant's objections are without merit and are **DENIED**. As the Magistrate Judge correctly explains in the report and recommendation, there are genuine issues of material fact in dispute which preclude summary judgment under Fed. R. Civ. P. 56. Defendant Decker is not entitled to qualified immunity from suit. The Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and W.D. Mich. LCivR 72.3(b). Accordingly, defendant Decker's motion for summary judgment [Doc. No. 10] is **DENIED**.

SO ORDERED.

Dated: December 11 , 2006.

/s/ R. Allan Edgar

R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE